

SENATE BILL No. 175

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-6-3.9.

Synopsis: Investigatory powers of the secretary of state. Requires the secretary of state to investigate complaints alleging violations of Indiana election law. Gives the secretary of state certain investigative powers, including the power to issue subpoenas and civil investigative demands. Requires the attorney general to provide legal assistance to the secretary of state in the investigation of complaints. Authorizes the secretary of state to seek the appointment of a special prosecutor if the secretary of state considers the appointment necessary in the investigation of complaints.

Effective: July 1, 2007.

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January 8, 2007, read first time and referred to Committee on Local Government and Elections.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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SENATE BILL No. 175

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-6-3.9 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2007]:

4 **Chapter 3.9. Investigation of Violations of Election Law**

5 **Sec. 1. The secretary of state shall investigate complaints**
6 **alleging violations of this title.**

7 **Sec. 2. (a) If, after investigating a complaint under section 1 of**
8 **this chapter, the secretary of state finds that there is a basis for the**
9 **complaint, the secretary of state shall refer the complaint and the**
10 **results of the investigation to the appropriate local, state, or federal**
11 **agency.**

12 **(b) If, after investigating a complaint under section 1 of this**
13 **chapter, the secretary of state determines that there is a basis for**
14 **belief that there may have been a violation of criminal law, the**
15 **secretary of state shall refer the complaint to the appropriate**
16 **federal agencies or the appropriate prosecuting attorney.**

17 **(c) Instead of referring a matter under subsection (b), the**



1 secretary of state may seek the appointment of a special prosecutor
 2 under IC 33-39-1-6 if the secretary of state considers appointment
 3 of a special prosecutor necessary to implement this chapter.

4 Sec. 3. (a) In conducting an investigation under this chapter, the
 5 secretary of state may do any of the following:

6 (1) Issue and serve subpoenas requiring:

7 (A) the appearance of a witness in person before the
 8 secretary of state or any person designated by the
 9 secretary of state; or

10 (B) the production of books, papers, electronic data, and
 11 documents or other things.

12 (2) Question witnesses.

13 (3) Require witnesses to give testimony under oath.

14 (4) Transcribe testimony provided by witnesses.

15 (5) Copy, examine, or inspect, or cause to be copied,
 16 examined, or inspected, any books, papers, electronic data,
 17 records of investigations, summaries of investigations, and
 18 documents or other things contained or found in any public
 19 office or other place (including, without limitation, evidence
 20 under the control of the state police department, local law
 21 enforcement personnel, prosecuting attorneys, circuit court
 22 clerks, county election boards, county boards of registration,
 23 and boards of elections and registration), whether or not the
 24 books, papers, electronic data, records of investigations,
 25 summaries of investigations, and documents or other things
 26 are or contain confidential information. The secretary of state
 27 shall maintain the confidentiality of any information obtained
 28 under this subdivision.

29 (6) Examine, inspect, or test, or cause to be examined,
 30 inspected, or tested, any machine, computer, or other thing.

31 (7) Issue a civil investigative demand.

32 (8) Apply to a court to enforce a subpoena, civil investigative
 33 demand, or any other investigative request issued under this
 34 chapter.

35 (9) Exercise all the investigative powers of a prosecuting
 36 attorney.

37 (b) Only the secretary of state or a person designated by the
 38 secretary of state may exercise the powers provided in this section.

39 Sec. 4. (a) This section applies if:

40 (1) a person disobeys a lawful:

41 (A) subpoena issued under this chapter; or

42 (B) demand issued under this chapter requiring the

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- 1 production of books, accounts, papers, records, documents,
2 or other evidence or information; or
3 (2) a witness refuses to:
4 (A) appear when subpoenaed;
5 (B) testify to any matter regarding which the witness may
6 lawfully be questioned; or
7 (C) take or subscribe an oath required under this chapter.
8 (b) The secretary of state may file a written petition with the
9 circuit or superior court of the county in which the investigation is
10 being or will be conducted, where the demand is made, or where
11 production is ordered to be made to compel:
12 (1) obedience to the lawful requirements of the subpoena,
13 order, or demand;
14 (2) the production of the necessary or required books, papers,
15 records, documents, or other evidence or information; or
16 (3) a witness to:
17 (A) appear in any county in Indiana and to testify to any
18 matter regarding which the witness may lawfully be
19 interrogated; or
20 (B) take or subscribe to an oath required under this
21 chapter.
22 (c) The court shall hold a hearing to determine whether the
23 person referred to in subsection (a)(1) may lawfully refuse to
24 comply with the subpoena or demand or whether the witness
25 referred to in subsection (a)(2) may lawfully refuse to appear, take
26 an oath, and testify.
27 (d) If the court determines that the person referred to in
28 subsection (a)(1) or the witness referred to in subsection (a)(2),
29 based upon the person's or witness's privilege against
30 self-incrimination, may properly refuse to answer a particular
31 question or produce a particular item, the court shall grant use
32 immunity to the person or witness at the written request of the
33 secretary of state. The court shall instruct the person or witness, by
34 written order or in open court, that:
35 (1) evidence the person or witness gives, or evidence derived
36 from that evidence, may not be used in any criminal
37 proceedings against the person or witness, unless the evidence
38 is volunteered by the person or witness or is not responsive to
39 a question; and
40 (2) the person or witness must answer the questions asked or
41 produce the items requested.
42 A grant of use immunity under this subsection does not prohibit

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1 the use of evidence that the person or witness gives in an
2 investigation from being used in a prosecution for perjury under
3 IC 35-44-2-1.

4 (e) If a person:

5 (1) refuses to give the evidence after the person has been
6 granted use immunity under subsection (d); or

7 (2) otherwise fails, refuses, or neglects to comply with a court
8 order under this section;

9 the court shall punish the person for contempt of court.

10 Sec. 5. (a) At the secretary of state's request, the attorney
11 general shall give all necessary assistance to the secretary of state
12 to implement this chapter.

13 (b) The attorney general shall employ legal and other
14 professional services necessary to adequately and fully assist the
15 secretary of state as the secretary of state requests under this
16 section.

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